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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------------|------------------|
| 09/673,300 | 10/16/2000 | Kciko Sakakibara | 001560-387 | 5308 |
| 7590 | 03/25/2003 | | | |
| Ronald Grudziecki Burns Doane Swecker & Mathis PO Box 1404 Alexandria, VA 22313-1404 | | | EXAMINER EINSMANN, JULIET CAROLINE | |
| | | | ART UNIT 1634 | PAPER NUMBER |

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|---|---------------------------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 09/673,300 Examiner Juliet C Einsmann | SAKAKIBARA ET AL. Art Unit 1634 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires ____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on 10 February 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): 112 2nd rejection of claim 16.
4. Newly proposed or amended claim(s) 2 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

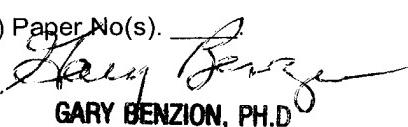
Claim(s) allowed: 2 and 13.

Claim(s) objected to: ____.

Claim(s) rejected: 14-16.

Claim(s) withdrawn from consideration: ____.

8. The proposed drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 

10. Other: ____

GARY BENZION, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 5. does NOT place the application in condition for allowance because: With regard to the remaining rejection under 112 1st paragraph, for scope of enablement, applicant simply argues that it is believed that the rejection of these claims is a mistake since they depend from allowable claim 2. However, this is an incorrect assumption. The statement of rejection clearly sets forth that the specification does not reasonably provide enablement for transgenic plants or cut flowers which comprise instant SEQ ID NO: 1 (see page 8 of the FINAL rejection). Furthermore, the rejection itself specifically addresses transgenic plants (see page 10), and the arguments section of the final rejection particularly noted that applicant's previous remarks did not address the rejection for scope of enablement with regard to the hosts or plants (see page 13 of the FINAL rejection). Thus, for the reasons of record, the rejection is maintained. .